



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

DECISION

[REDACTED]
c/o Benjamin M. Adams
Adams & Woodrow, S.C.
301 Nicolet Boulevard
Neenah, WI 54956-2788

MRA-68/48394

The proposed decision of the hearing examiner dated March 26, 2003 is hereby amended as follows and as such is adopted as the final order of the Department.

DISCUSSION section:

- Delete section I.
- Renumber section II to I.
- Renumber section III to II and delete the first eight paragraphs.

REQUEST FOR A REHEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence that would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one). The appeal must be served on the Department of Health and Family Services, P.O. Box 7850, Madison, WI 53707-7850.

The appeal must also be served on the other "PARTIES IN INTEREST" named in the proposed decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 11th
day of May, 2005.



Kenneth Munson, Deputy Secretary
Department of Health & Family Services



STATE OF WISCONSIN
Division of Hearings and Appeals

[REDACTED]
 [REDACTED]
 c/o Benjamin M. Adams
 Adams & Woodrow, S.C.
 301 Nicolet Boulevard
 Neenah, WI 54956-2788

**PROPOSED
 DECISION
 ON REMAND FROM
 CIRCUIT COURT**

MRA- 68/48394

PRELIMINARY RECITALS

Petitioner applied for Medical Assistance (MA), under spousal impoverishment rules, with the Waupaca County Department of Health and Human Services (County) on January 30, 2001 and was denied due to excess assets. On March 8, 2001 petitioner filed a request for a Fair Hearing under Wis. Stat. § 49.455(8)(a)5. (1999-00) and Wis. Admin. Code § HFS 103.075(8)(a)5. (February 2002) with the Division of Hearings and Appeals (DHA) for the purpose of: (A) increasing her husband's Minimum Monthly Maintenance Needs Allowance (MMMNA); and, (B) increasing her husband's Community Spouse Resource Allowance (CSRA) [also sometimes called the Community Spouse Asset Share (CSAS)]. A Fair Hearing was held on April 18, 2001 in Waupaca, Wisconsin. At petitioner's request the record was held open until April 27, 2001.

The original DHA Decision in this matter was issued as a Proposed Decision and sent to the Secretary of the Wisconsin Department of Health and Family Services (DHFS) for Final Decision-making. See, Wis. Stat. § 227.46(2) (1999-00); Wis. Admin. Code §§ HA 3.09(9) & (10) (September 2001). The Proposed Decision was dated and issued June 12, 2001, and concluded, in part, that petitioner's request to increase the CSRA by the Fair Hearing process was not ripe for decision and must be denied. This conclusion was based on the determination that it had not been established that petitioner is otherwise eligible for MA because petitioner and her husband had not shown that they do not have in excess of \$2000 in assets that do not generate income. Specifically, petitioner and her husband owned the following whole life insurance policy with a cash surrender value, at all relevant times, in excess of \$2,000.00: Policy Number [REDACTED] from GE Life and Annuity Assurance Company of Richmond, Virginia. The June 12th Proposed Decision determined that it had not been established that the life insurance policy generated any income. Finally, the Proposed Decision concluded that petitioner's request to increase the MMMNA was moot because, pursuant to the above, petitioner was not otherwise eligible for MA.

By a Decision dated and issued July 19, 2001 the DHFS Secretary adopted the June 12th Proposed Decision as the Final Order of DHFS.

On August 17, 2001 petitioner filed a "Petition for Judicial Review", dated August 16, 2001, with the Waupaca County Circuit Court. It was assigned Case No. 01-CV-298 by the Circuit Court. Petitioner also filed "Petitioner's Brief in Support of Petition for Judicial Review" dated May 14, 2002. DHFS filed

"Notice and Motion for Remand", "Affidavit", and "Respondent's Brief in Support of Motion for Remand" all dated June 26, 2002. Petitioner filed "Notice of: Motion to Strike Affidavit; Motion to Dismiss and for Fees and Costs; and Motion for Decision on the Merits", "Motion to Strike Affidavit", "Motion to Dismiss and Motion for Fees and Costs", "Petitioner's Answer to Motion for Remand", "Motion for Decision on the Merits", and "Petitioner's Brief in Support of Petitioner's Answer to Respondent's Motion for Remand and in Support of Petitioner's Motion for Decision on the Merits", all dated August 22, 2002.

The Circuit Court (Branch 1, The Honorable Philip M. Kirk) issued a "Decision" dated September 3, 2002 and an "Order for Remand" dated and filed September 19, 2002. The Circuit Court Ordered the July 19, 2001 DHFS Final Decision reversed. It further Ordered that the matter be remanded, pursuant to Wis. Stat. § 227.57(5), for further proceedings based upon a correct application of controlling law as set forth in Wis. Stat. § 49.455(8)(d) and *Wisconsin Department of Health and Family Services v. Blumer*, 534 U.S. 473, 122 S.Ct. 962 (decided February 20, 2002) [Blumer II], reversing *Blumer v. DHFS*, 2000 WI App 150, 237 Wis. 2d 810, 615 N.W.2d 647 (Ct.App. decided June 8, 2000) [Blumer I].

The issues for determination are: (A) whether the MMMNA can be increased; and, (B) whether the CSRA can be increased.

PARTIES IN INTEREST:

Petitioner:

[redacted] [not present at
April 18, 2001 Hearing]
c/o Benjamin M. Adams
Adams & Woodrow, S.C.
Attorneys
301 Nicolet Boulevard
Neenah, Wisconsin 54956-2788

Represented by:

Benjamin M. Adams
Adams & Woodrow, S.C.
Attorneys
301 Nicolet Boulevard
Neenah, Wisconsin 54956-2788

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street
Room 250
P.O. Box 309
Madison, Wisconsin 53707-0309

BY: Patricia A. Moe, ESS

Waupaca County Department of Health and Human Services
811 Harding Street
Waupaca, Wisconsin 54981-2087

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN [REDACTED], CARES # [REDACTED] DOB [REDACTED] is married and is a resident of Waupaca County; petitioner lives in a nursing home (she entered the nursing home in October 2000) and her husband lives in a Community Based Residential Facility (CBRF) in the community. Exhibits #1 & #4.
2. Petitioner applied for MA, under spousal impoverishment rules, with the County on January 30, 2001.
3. By a computer-generated "Notice of Decision" dated March 6, 2001 petitioner's MA application was denied due to excess assets.
4. Petitioner's husband's MMMNA, without a fair hearing, is \$2,175.00. Exhibit #1
5. Petitioner's husband has monthly expenses in excess of the \$2,175.00 MMMNA and petitioner is requesting that the MMMNA be increased. Exhibits #1 & #4.
6. The following are the monthly expenses of petitioner's husband:
 - (i) room and board at the Community Based Residential Facility (CBRF) where he lives -- \$2,344.53; and,
 - (ii) prescription medications -- \$363.25.The above is a total of \$2,707.78 per month.
Exhibits #1 & #4.
7. Petitioner's husband currently needs a monthly income of \$2,707.78 in order to avoid a situation that would result in his not being able to provide for his own necessary and basic maintenance needs. Exhibits #1 & #4.
8. The total monthly income of petitioner and her husband as of December 2000, excluding income generated by the total combined assets of petitioner and her husband, is \$2,190.00 (\$789.00 per month in Social Security for petitioner plus \$1,401.00 per month in Social Security for petitioner's husband). Exhibit #1.
9. Petitioner pays \$140.00 per month for health insurance for herself. Exhibit #1.
10. The value of total combined assets of petitioner and her husband is \$180,778.34 as of December 2000. Exhibits #1 & #2.
11. The total combined assets of petitioner and her husband produce the following value every month as of December 2000 belonging to petitioner and her husband (either by generating income or by increasing in value): \$681.58. Exhibits #1 & #2.
12. Petitioner has made all of her income, except for an amount equal to the sum of her personal needs allowance, any family allowances paid by petitioner, and amounts incurred as expenses for medical or remedial care for herself, available to her husband.

DISCUSSION

(1) MMMNA INCREASE

The MMMNA can be increased if either spouse establishes at a Fair Hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the MMMNA. Wis. Stat. § 49.455(8)(c) (1999-00); Wis. Admin. Code § HFS 103.075(8)(c) (February 2002); MA Handbook, Appendix 23.6.0.SectionA.1. The phrase “exceptional circumstances resulting in financial duress” means situations that result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs. Wis. Admin. Code § HFS 103.075(8)(c) (February 2002); MA Handbook, Appendix 23.6.0.SectionA.1. Thus, the burden is on the person seeking an increase in the MMMNA. It must be established that the community spouse needs

income above the level provided by the MMMNA in order to avoid a situation that would result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs.

The monthly expenses of petitioner's husband amount to \$2,707.78 and consist entirely of his CBRF room and board expenses and his prescription drug expenses. These expenses are necessary and basic maintenance needs for petitioner's husband. Petitioner's husband would not be able to provide for his own basic and necessary maintenance needs if these expenses were not allowed. Therefore, expenses in the amount of \$2,707.78 per month for petitioner's husband must be allowed. Thus, the MMMNA must be increased to \$2,707.78.

(11) CSRA INCREASE

The CSRA can be increased if it is established at a Fair Hearing that the CSRA determined without a Fair Hearing does not generate enough income to raise the community spouse's income to MMMNA. In such a case a CSRA will be established by the Fair Hearing process that generates enough income to raise the community spouse's income to the MMMNA. Wis. Stat. § 49.455(8)(d) (1999-00); Wis. Admin. Code § HFS 103.075(8)(d) (February 2002).

In this case, the MMMNA is \$2,707.78. The total monthly income of petitioner and her husband as of December 2000, excluding income generated by the total combined assets of petitioner her husband, is \$2,190.00. This consists of \$789.00 in monthly Social Security for petitioner plus \$1,401.00 in monthly Social Security for her husband. However, petitioner is not required to make the following amount of her income available to her husband: an amount equal to the sum of her personal needs allowance, any family allowances paid by her, and amounts incurred as expenses for medical or remedial care for herself. Wis. Stat. § 49.455(8)(d) (1999-00). At times relevant to this Decision petitioner had a \$40.00 per month personal needs allowance and paid \$140.00 per month for health insurance for herself (a total of \$180.00). Thus, petitioner is required to make \$609.00 (\$789.00 minus \$180.00) per month of her income available to her husband. This means that the total monthly income available to petitioner's husband, excluding income generated by the total combined assets of petitioner her husband, is \$2,010.00 (\$609.00 plus \$1,401.00).

The total amount of monthly income available to petitioner's husband, including income generated by the total combined assets of petitioner her husband, is \$2,691.58 (\$2,010.00 plus \$681.58). Thus, even if all assets are assigned to the CSRA, the monthly income of petitioner's husband still will fall below the MMMNA of 2,707.78. It is evident, therefore, that a CSRA determined without a Fair Hearing, or even with a Fair Hearing, could not generate enough income to raise petitioner's husband's income to the MMMNA. It is also evident that the CSRA must be increased so as to include, up to a maximum of \$180,778.34, all of the assets of petitioner and her husband. This will bring petitioner's husband as close as possible to the MMMNA, given the total assets that are available to petitioner and her husband.

This Decision on Remand from Circuit Court is a Proposed Decision and will be sent to the DHFS Secretary for Final Decision-making. See, Wis. Stat. § 227.46(2) (1999-00); Wis. Admin. Code §§ HA 3.09(9) & (10) (September 2001).

CONCLUSIONS OF LAW

For the reasons discussed above:

(A) Petitioner has established that her husband needs an MMMNA of \$2,707.78 in order to avoid a situation that would result in him not being able to provide for his own necessary and basic maintenance needs; and,

(B) Petitioner's CSRA may be increased to include all assets of petitioner and her husband, but only up to a maximum of \$ 180,778.34.

NOW, THEREFORE, it is

ORDERED

That, if this Decision is adopted by the DHFS Secretary as the Final Decision, this matter be REMANDED to the County and that, within 10 days of the Final Decision in this matter, the County: (A) use \$2,707.78 (instead of \$2,175.00) as the MMMNA for petitioner's husband in determining the monthly income allocation to be made from petitioner to her husband; (B) redetermine petitioner's eligibility for institutional MA as of the date of petitioner's MA application (January 30, 2001), and for up to the three months prior to petitioner's MA application date, increasing petitioner's CSRA to include all assets of petitioner and her husband, but only up to a maximum of \$ 180,778.34.

NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLMENTED AS SUCH.

If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as "PARTIES IN INTEREST."

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the Department of Health and Family Services for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of
Madison, Wisconsin, this 26th day
of March, 2003.



Sean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals
03192003/SPM